

Internal Revenue Service

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Telephone Number:

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Date:
April 08, 2011

LEGEND

X =

A =

B =

Trust =

Date =

Year =

State =

Dear :

This responds to a letter dated November 3, 2010, submitted on behalf of X by X's authorized representative, requesting inadvertent invalid S corporation election relief under section 1362(f) of the Internal Revenue Code (Code). In addition, X's representatives also seek relief to allow Trust to file a late election to be treated as a qualified subchapter S trust (QSST) pursuant to section 1361(d) of the Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date, under the laws of State. Effective Date, X elected to be treated as an S corporation. On Date, the shareholders of X included B and Trust. Trust was intended to be a Qualified Subchapter S Trust (QSST), however, a timely QSST election was not filed, resulting in X's S corporation election being invalid. X represents that the failure to make a QSST election was discovered by X's tax advisor in Year.

X represents that its S corporation invalid election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X also represents that B's failure to elect QSST status on behalf of A, was unintentional and was not motivated by tax avoidance or retroactive tax planning. Further, X represents that X and its shareholders agree to make any adjustments required by the Secretary.

X also represents that all income has been reported on all affected returns of X and all of its shareholders consistent with the treatment of X as an S corporation, and that neither X nor any of its shareholders intended to make an invalid Subchapter S election. In addition, X represents that the Trust has qualified as a QSST under section 1361(d) at all times since the Trust acquired the X stock on Date and other than the inadvertent invalid election due to an ineligible shareholder, X has qualified as a small business corporation at all times since its election on Date.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of section 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under section 1361(d)(2) will be treated as a trust described in section 1361(c)(2)(A)(i), and

the beneficiary of such trust shall be treated as the owner (for purposes of section 678(a)) of that portion of the QSST which consists of stock in an S corporation to which the election under section 1361(d)(2) applies. Under section 1361(d)(2)(A), a beneficiary of a QSST (or his legal representative) may elect to have section 1361(d) apply. Under section 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) provides that for purposes of section 1361(d), the term “qualified subchapter S trust” means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary’s death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(a) provides, in part, that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under section 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to section 1362(b)(2)) by reason of a failure to meet the requirements of section 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to section 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations, provides that the current income beneficiary of the trust must make the QSST election by signing and filing with

the service center with which the corporation files its income tax the applicable form or a statement including the information listed in section 1.1361-1(j)(6)(ii).

Section 1.1361-1(j)(6)(iii)(A) provides that if S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

Section 1.1361-1(j)(7)(i) provides that the income beneficiary who makes the QSST election and is treated (for purposes of section 678(a)) as the owner of that portion of the trust that consists of S corporation stock is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective because of the failure of B, on behalf of A, to make timely QSST election. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of section 1362(f). Therefore, X will be treated as an S corporation effective Date and thereafter, provided X's S corporation election was otherwise valid and not otherwise terminated under section 1362(d).

This ruling is contingent upon B, on behalf of A, filing a QSST election for Trust, with an effective date of Date, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the QSST election.

Except as specifically ruled upon above, we express or imply no opinion concerning the tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or whether Trust was otherwise a valid QSST.

This ruling is directed only to the taxpayer who requested it. According to section 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

Laura C.. Fields

Laura C. Fields

Acting Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: